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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 JAMES K.W. MATLEAN,

8 Plaintiff,

Case No. 2:17-cv-1461-KJD-DJA

9 v.

10 JAMES DZURENDA, *et al.*,

11 Defendants.

ORDER

12 Before the Court is a Motion for Summary Judgment filed by defendant James Dzurenda
13 (#26).¹ Plaintiff James Matlean responded (#36), and Dzurenda replied (#36).

14 James Matlean is an inmate at the Saguaro Correctional Center. He allegedly suffers from
15 Short Bowel Syndrome, which affects the way his digestive system absorbs nutrients from his
16 diet. Matlean claims that prison staff and doctors have been deliberately indifferent to his
17 condition in violation of the Eighth Amendment. Dzurenda moves for summary judgment on
18 Matlean's Eighth Amendment claim, arguing that Matlean's Short Bowel Syndrome is not a
19 serious medical need, and even if it were, prison officials have adequately treated his condition.
20 Alternatively, Dzurenda claims qualified immunity. The Court agrees that Matlean has not
21 shown that that his short bowel syndrome is a serious medical condition. He has similarly failed
22 to demonstrate that prison staff were indifferent to his medical needs. And so, the Court grants
23 summary judgment on Matlean's Eighth Amendment claim.
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27 ¹ The Attorney General's motion also includes the following defendants: Romeo Aranas, David Mar, Frank
28 Dreesen, David Tristan, Sonya Carrillo, and Benedicto Gutierrez. For convenience, the Court will refer to these
defendants collectively as "Dzurenda," unless otherwise necessary. As for the remaining defendants, the Court
extended the deadline for Matlean to serve the remaining defendants, and they have not yet answered Matelean's
complaint or joined this motion.

1 **I. Background**

2 James Matlean has been legally incarcerated since at least December of 2012. It was then
3 that Matlean claims he first notified prison doctors that he suffered from Short Bowel Syndrome.
4 See Compl. 4-A, ECF No. 7. At the time, Matlean “consulted numerous times” with Dr. Koehn
5 to “develop a comprehensive treatment plan” for his condition. Id. Short Bowel Syndrome
6 generally results from damage or removal of a portion of the small intestine. See Short Bowel
7 Syndrome, Nat’l Inst. Of Diabetes and Digestive and Kidney Diseases,
8 <https://www.niddk.nih.gov/health-information/digestive-diseases/short-bowel-syndrome> (last
9 visited Sep. 27, 2019) (“SBS Facts”). Left untreated, short bowel syndrome can cause bloating,
10 cramping, diarrhea, vomiting, and malnutrition. Id. Generally, however, nutritional support and
11 an augmented diet alleviate the condition’s effects. Id.

12 Matlean claims he began the grievance process to request necessary nutritional support in
13 February of 2014. Compl. at 4-B. The following May, Matlean was transferred from Ely to
14 Northern Nevada Correctional Center. Id. Matlean claims that he promptly alerted prison
15 officials of his condition and requested nutritional assistance (see id.), but there is no evidence of
16 that. Doctors at Northern Nevada Correctional Center prescribed Zantac, Pepto Bismol, and
17 Reguloids to alleviate Matlean’s stomach pain. Id. At the end of 2014, Matlean was again
18 transferred, this time to High Desert State Prison in Indian Springs, Nevada. Id. at 5-B. From
19 there, Matlean was transferred to Southern Desert Correctional Center. Id. at 4-C–4-D. Matlean
20 claims he was not seen by a doctor for more than a month while prison officials processed his
21 final transfer. Compl. at 4-C.

22 In April of 2016, Matlean began the grievance process at Southern Desert to receive
23 nutritional assistance. Matlean requested additional calorie intake to offset the nutrients that his
24 intestines were unable to absorb. Southern Desert Correction Center’s physician, Dr. Vicuna,
25 prescribed medication and a multivitamin to help Matlean’s stomach and ordered a nutritional
26 drink and a snack at night to increase Matlean’s calorie intake. Def.’s Mot. Summ. J. 6, ECF No.
27 26 (citing Compl. at 4-F). Matlean again filed a grievance, claiming that the medication,
28 multivitamin, and increased snacks were not enough and that he needed 100% more calories

1 each day. Id. at 7. Prison officials denied that request, however, because they determined
2 Matlean had not complied with Dr. Vicuna's prior orders and was not drinking the nutritional
3 drink or retrieving his pills regularly. Grievance Report 3, ECF No. 26 Ex. A.

4 When prison staff refused to further augment Matlean's diet, he brought this suit.
5 Matlean brought two causes of action: (1) a violation of the Eighth Amendment right to be free
6 from cruel and unusual punishment and (2) a violation of Matlean's right to medical treatment
7 under 42 U.S.C. § 12010. Compl. at 4, 5. Matlean requested "damages in excess of \$500,000,"
8 punitive damages, compensatory damages, and declaratory and injunctive relief. Id. at 9. The
9 Attorney General's Office accepted service on every defendant except Jo Gentry, Dr. Koehn, Dr.
10 Vicuna, and SL Clark. ECF No. 15. Matlean requested, and the Court granted, an extension of
11 time to serve Gentry, Koehn, Vicuna, and Clark. See ECF No. 18. Matlean has since served all
12 but SL Clark. ECF Nos. 40, 43, 44. Dzurenda now moves for summary judgment on Matlean's
13 Eighth Amendment claim.

14 **II. Legal Standard**

15 The Court construes Matlean's pro se pleading liberally and in his favor. See Erickson v.
16 Pardus, 551 U.S. 89, 94 (2007). Despite that leeway, Matlean is still "bound by the rules of
17 procedure." Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Rule 56 allows summary judgment
18 where there exists no genuine issue of fact and when the moving party is entitled to judgment as
19 a matter of law. See Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).
20 The moving party bears the burden of showing the absence of material fact. Celotex, 477 U.S. at
21 323. The burden then shifts to the nonmoving party to show specific facts demonstrating a
22 genuine factual dispute for trial. See Masushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S.
23 574, 587 (1986).

24 The Court makes all justifiable inferences in favor of the nonmoving party. Matsushita,
25 475 U.S. at 587. However, the nonmoving party may not merely rest on the allegations in the
26 pleadings. Rather, the nonmoving party must produce specific facts—by affidavit or other
27 evidence—showing a genuine issue of fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256
28 (1986). And summary judgment is not appropriate if a reasonable jury could return a verdict for

1 the nonmoving party. Liberty Lobby, 477 U.S. at 248.

2 **III. Analysis**

3 Dzurenda argues that Matlean’s Eighth Amendment claim fails as a matter of law
4 because Matlean does not suffer from a serious medical need, and prison officials’ response to
5 Matlean’s condition was constitutionally adequate. Dzurenda further argues that even if Matlean
6 could prove a deliberate indifference claim, these officials would be entitled to qualified
7 immunity. The Court agrees.

8 The Eighth Amendment, applicable to the states by the Fourteenth Amendment,
9 prohibits cruel and unusual punishment. Historically, “cruel and unusual punishment” was
10 punishment unauthorized by statute or punishment that was disproportionate to the charged
11 offense. Gregg v. Georgia, 428 U.S. 153, 167–70 (1976). The Framers’ adoption of the term
12 proscribed “torture and other barbar(ous) methods of punishment.” Estelle v. Gamble, 429 U.S.
13 97, 102 (1976) (internal quotations omitted). The Eighth Amendment’s protections, however,
14 have evolved to include the “broad and idealistic concepts of dignity, civilized standards,
15 humanity, and decency.” Id. (quoting Jackson v. Bishop, 404 F.2d 571, 579 (9th Cir. 1968)). As a
16 result, the Amendment prohibits “more than physically barbarous punishments.” Estelle, 429
17 U.S. at 102. It protects against state action that causes “the unnecessary and wanton infliction of
18 pain.” Gregg, 428 U.S. at 173.

19 In the prisoner context, the Eighth Amendment prohibits deliberate indifference to a
20 prisoner’s medical needs if that indifference causes unnecessary and wanton infliction of pain.
21 Prison officials violate the Eighth Amendment if they fail to respond to a prisoner’s medical
22 needs, if they intentionally deny or delay access to medical care, or if they interfere with the
23 prisoner’s treatment. Estelle, 429 U.S. at 104–05. Estelle is clear, however, that merely
24 inadequate medical care does not violate the Eighth Amendment. The inadvertent failure to
25 provide care cannot rise to the level of “wanton” infliction of pain. Thus, the prison official’s
26 level of culpability must rise to more than mere negligence but less than the conscious desire to
27 cause the inmate pain. Farmer v. Brennan, 511 U.S. 825, 835 (1994).

28 To prevail, Matlean must show that (1) he had a serious medical need, the failure of

1 which to treat would cause further injury or wanton and unnecessary infliction of pain and (2)
2 that prison officials were deliberately indifferent to that need. Jett v. Penner, 439 F.3d 1091,
3 1096 (9th Cir. 2006). Here, Matlean has not shown either factor.

4 Matlean has not provided evidence that the failure to treat Small Bowel Syndrome with
5 his preferred treatment would cause wanton and unnecessary infliction of pain. First, there is no
6 evidence besides Matlean's own testimony that he has been diagnosed with Small Bowel
7 Syndrome or that he disclosed his condition to medical staff in the five years preceding this suit.
8 The only evidence that Matlean has Small Bowel Syndrome is based on his 2016 representation
9 to Dr. Vicuna in May of 2016. See Med. Diet Order Form, ECF No. 35 Ex. C. That does not
10 prove that Matlean was examined and diagnosed with Small Bowel Syndrome at any point.
11 Matlean's self-serving and conclusory allegations to the contrary do not create a genuine issue of
12 fact. See F.T.C. v. Pub. Clearing House, Inc., 104 F.3d 1168, 1171 (9th Cir. 1997).

13 Even assuming Matlean suffers from Small Bowel Syndrome, he provides no evidence
14 that the doctors' proposed course of treatment would cause unnecessary or wanton infliction of
15 pain. Matlean submits a document, titled "Nutrition Strategies for Managing Short Bowel
16 Syndrome." ECF No. 35 Ex. B. The document outlines strategies to avoid malnutrition and
17 dehydration, two apparent effects of Small Bowel Syndrome. Id. To be sure, both malnutrition
18 and dehydration can pose serious health risks. However, the prison medical staff was well
19 equipped to treat both malnutrition and dehydration to avoid the unnecessary and wanton
20 infliction of pain. Therefore, Matlean has not demonstrated that his Small Bowel Syndrome was
21 a serious medical need that could cause the unnecessary or wanton infliction of pain.

22 Likewise, there is no evidence that prison officials were deliberately indifferent to
23 Matlean's condition. To the contrary, prison officials at two different facilities prescribed
24 medication or altered Matlean's diet to treat his symptoms. At bottom, Matlean's claim boils
25 down to a disagreement with his treating physicians whether their course of action would
26 adequately treat his disorder. The doctors believed medication, a nutritional drink, and a night-
27 time snack would be enough to treat Matlean's symptoms. Matlean believed that a 100%
28 increase in his daily caloric intake was the only solution. A difference in medical judgment or

1 disagreement between patient and physician, however, does not give rise to a deliberate
2 indifference claim. Franklin v. Or. Welfare Div., 662 F.2d 1337, 1344 (9th Cir. 1981). Therefore,
3 prison officials did not demonstrate deliberate indifference to Matlean’s Small Bowel Syndrome.

4 Alternatively, even if Matlean met his burden to prove deliberate indifference, which he
5 has not, each of these defendants would be shielded from civil liability by qualified immunity. A
6 plaintiff overcomes qualified immunity if the government official violated a constitutional right
7 *that was clearly established* at the time of the alleged violation. C.B. v. City of Sonora, 769 F.3d
8 1005, 1022 (9th Cir. 2014) (emphasis added). The Supreme Court has cautioned against defining
9 clearly established rights too broadly. See White v. Pauly, 137 S.Ct. 548, 552 (2017). The clearly
10 established law must be “particularized to the facts of the case.” Id. (internal quotations omitted).
11 To prevail, Matlean must identify a case where a prison official acted under similar
12 circumstances and had been found to violate the Eighth Amendment. Id.; see also Greene v.
13 Camreta, 588 F.3d 1011, 1031 (9th Cir. 2009), vacated in part on other grounds, 661 F.3d 1201
14 (9th Cir. 2011) (the burden rests with the non-governmental party to identify a clearly
15 established law). Matlean has not done so, and the Court has similarly not identified such a case.
16 Therefore, these defendants would receive qualified immunity if Matlean could show that they
17 violated his Eighth Amendment rights.

18 In sum, there is no genuine issue of fact that Matlean did not suffer a serious medical
19 need, and if he had, prison officials were not deliberately indifferent to that need. The alleged
20 deliberate indifference claim boils down to a disagreement between Matlean and his doctors
21 about the proper treatment of his symptoms, which does not rise to the level of an Eighth
22 Amendment violation. Alternatively, qualified immunity would shield these defendants from
23 liability because Matlean has not shown a clearly established constitutional right that these
24 defendants violated.

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